

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JUL 23 2000

DAVID J. MALAND, CLERK
BY DEPUTY 

NATHAN L. JACKSON, Individually and
on behalf of a putative class of similarly
situated individuals

v.

EAST TEXAS MEDICAL CENTER ATHENS,
EAST TEXAS MEDICAL CENTER
REGIONAL HEALTHCARE SYSTEM, EAST
TEXAS MEDICAL CENTER, EAST TEXAS
MEDICAL CENTER PITTSBURGH, EAST
TEXAS MEDICAL CENTER FAIRFIELD,
EAST TEXAS MEDICAL CENTER RUSK,
EAST TEXAS MEDICAL CENTER
CROCKETT, EAST TEXAS MEDICAL
CENTER JACKSONVILLE, EAST TEXAS
MEDICAL CENTER CLARKSVILLE, EAST
TEXAS MEDICAL CENTER TRINITY, EAST
TEXAS MEDICAL CENTER CARTHAGE,
EAST TEXAS MEDICAL CENTER
QUITMAN, EAST TEXAS MEDICAL
CENTER MOUNT VERNON, AND EAST
TEXAS MEDICAL CENTER GRAND
SALINE

v.

AETNA HEALTH AND LIFE INSURANCE
COMPANY; AETNA INSURANCE
COMPANY OF AMERICA, AMERICAN
FAMILY LIFE ASSURANCE COMPANY OF
COLUMBUS; AMERICAN NATIONAL
INSURANCE COMPANY; BANKERS LIFE
AND CASUALTY COMPANY; BENEFIT
LIFE INSURANCE COMPANY; CHRISTIAN
FIDELITY LIFE INSURANCE COMPANY;
CIGNA HEALTH-CARE OF TEXAS, INC.;
COMBINED UNDERWRITERS LIFE
INSURANCE COMPANY; CONNECTICUT
GENERAL LIFE INSURANCE COMPANY;

CIVIL ACTION NO.

600CV442

EMPLOYERS HEALTH INSURANCE §
 COMPANY; FIRST HEALTH LIFE & §
 HEALTH INSURANCE COMPANY; FORTIS §
 BENEFITS INSURANCE COMPANY; §
 FORTIS INSURANCE COMPANY; §
 GENERAL AMERICAN LIFE INSURANCE §
 COMPANY; GOLDEN RULE INSURANCE §
 COMPANY; THE GUARDIAN LIFE §
 INSURANCE COMPANY OF AMERICA; §
 HARRIS METHODIST HEALTH §
 INSURANCE COMPANY; HARRIS §
 METHODIST TEXAS HEALTH PLAN, INC.; §
 HEALTHPLAN OF TEXAS, INC., HUMANA §
 HEALTH PLAN OF TEXAS, INC.; §
 JEFFERSON PILOT LIFE-AMERICA §
 INSURANCE COMPANY; JOHN ALDEN §
 LIFE INSURANCE COMPANY; JOHN §
 HANCOCK LIFE INSURANCE COMPANY; §
 KAISER FOUNDATION HEALTH PLAN OF §
 TEXAS; LIBERTY MUTUAL INSURANCE §
 COMPANY; MARKEL INSURANCE §
 COMPANY; METROPOLITAN LIFE §
 INSURANCE COMPANY; MUTUAL OF §
 OMAHA INSURANCE COMPANY; UNITED §
 STATES LETTER CARRIERS MUTUAL §
 BENEFIT ASSOCIATION; NATIONAL §
 FINANCIAL INSURANCE COMPANY; NEW §
 ERA LIFE INSURANCE COMPANY; NEW §
 ERA LIFE INSURANCE COMPANY OF THE §
 MIDWEST; PCA HEALTH PLANS OF §
 TEXAS, INC. D/B/A HUMANA HEALTH §
 PLAN OF TEXAS, INC.; PHYSICIANS §
 MUTUAL INSURANCE COMPANY; §
 PIONEER LIFE INSURANCE COMPANY; §
 PRINCIPAL LIFE INSURANCE COMPANY; §
 PROVIDENT LIFE AND ACCIDENT §
 INSURANCE COMPANY; PRUDENTIAL §
 HEALTH CARE PLAN, INC.; PRUDENTIAL §
 HEALTHCARE AND LIFE INSURANCE §
 COMPANY OF AMERICA; THE §
 PRUDENTIAL INSURANCE COMPANY OF §
 AMERICA; §

RELIASTAR LIFE INSURANCE COMPANY;	§
RESERVE NATIONAL INSURANCE	§
COMPANY; SIERRA HEALTH AND LIFE	§
INSURANCE COMPANY, INC.; STANDARD	§
LIFE AND ACCIDENT INSURANCE	§
COMPANY; STATE FARM LIFE	§
INSURANCE COMPANY; UNICARE LIFE &	§
HEALTH INSURANCE COMPANY; UNITED	§
AMERICAN INSURANCE COMPANY;	§
UNITED HEALTHCARE INSURANCE	§
COMPANY; UNIVERSAL FIDELITY LIFE	§
INSURANCE COMPANY; USAA LIFE	§
INSURANCE COMPANY; AND WAUSAU	§
UNDERWRITERS INSURANCE COMPANY	§

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§1441, 1446, as amended by the Judicial Improvements and Access to Justice Act, Pub. Law 100-702 (Nov. 19, 1988), Third-Party Defendant, COMBINED UNDERWRITERS LIFE INSURANCE COMPANY (hereinafter "CU"), by its undersigned counsel, hereby removes this action from the 3rd Judicial District Court of Henderson County, Texas, and as grounds therefor, CU respectfully states:

1. On or about July 3, 2000, Defendant/Third-Party Plaintiffs, EAST TEXAS MEDICAL CENTER ATHENS, et al, filed a civil petition against Third-Party Defendant, COMBINED UNDERWRITERS LIFE INSURANCE COMPANY in the 3RD Judicial District Court of Henderson County, Texas. A copy of the "*Defendants' Original Third-Party Petition*" from the State Court case is attached hereto as Exhibit "A" and incorporated herein by reference as if fully set forth at length.

2. This Notice of Removal is timely filed in that it is filed within thirty (30) days after receipt by CU of service of process upon CU, as required by 28 U.S.C. §1446(b).

3. No proceedings have occurred in this action asserting claims other than the following filings: Plaintiff's Original Petition filed on or about May 8, 2000; Defendants, "ETMC-Athens", et al's Plea in Abatement and Original Answer to Plaintiff's Original Petition filed June 5, 2000; Defendants' Original Third-Party Petition which was filed on July 3, 2000 and CU's Original Answer on or about July 20, 2000. A certified copy of Plaintiff's Original Petition is attached hereto as Exhibit "B."

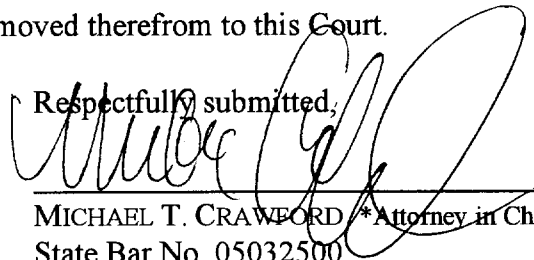
4. This action may be removed to this Court pursuant to 28 U.S.C. §1441(b) because it is a civil action over which the Federal District Courts have jurisdiction based upon a federal question.

5. This action is within the original jurisdiction of this Court under 28 U.S.C. § 1331 involving an ERISA action, 29 U.S.C. § 1001, et seq.

6. A copy of this Notice of Removal was filed with the County Clerk of Henderson County, Texas, on July 20, 2000, as required by 28 U.S.C. §1446(d).

WHEREFORE, the Petitioners pray that the above action now pending in the 3rd Judicial District Court of Henderson County, Texas be removed therefrom to this Court.

Respectfully submitted,



MICHAEL T. CRAWFORD *Attorney in Charge
State Bar No. 05032500
RAMEY & FLOCK, P.C.
500 First Place
P. O. Box 629
Tyler, Texas 75710
(903) 597-3301
(903) 597-2413 - Telecopier

Of Counsel:

Ramey & Flock, P.C.

500 First Place * P. O. Box 629

Tyler, Texas 75710

(903) 597-3301* (903) 597-2413

Attorneys for Third-Party Defendants,

COMBINED UNDERWRITERS LIFE

INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify on this 20th day of July, 2000, a true and correct copy of the foregoing instrument was placed in the United States Certified Mail, Return Receipt Requested, with proper postage affixed thereon, to:

Mr. Mike Jones

POTTER MINTON

P. O. Box 359

Tyler, Texas 75710

Mr. D. Brent Lemon

SHAW & LEMON

2723 Fairmount

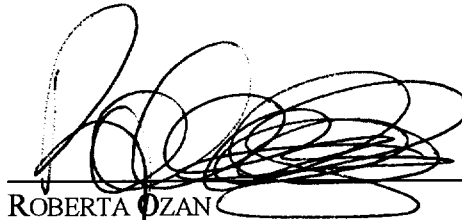
Dallas, Texas 75201

Mr. Charles Clark

CLARK, LEA, RUTTER & LOGSON

P. O. Box 98

Tyler, Texas 75710



ROBERTA OZAN

LEGAL ASSISTANT TO MICHAEL T. CRAWFORD

COMPANY; FORTIS BENEFITS INSURANCE	§
COMPANY; FORTIS INSURANCE COMPANY;	§
GENERAL AMERICAN LIFE INSURANCE	§
COMPANY; GOLDEN RULE INSURANCE	§
COMPANY; THE GUARDIAN LIFE	§
INSURANCE COMPANY OF AMERICA;	§
HARRIS METHODIST HEALTH INSURANCE	§
COMPANY; HARRIS METHODIST TEXAS	§
HEALTH PLAN, INC.; HEALTHPLAN OF	§
TEXAS, INC. HUMANA HEALTH PLAN OF	§
TEXAS, INC.; JEFFERSON PILOT LIFE-	§
AMERICA INSURANCE COMPANY; JOHN	§
ALDEN LIFE INSURANCE COMPANY; JOHN	§
HANCOCK LIFE INSURANCE COMPANY;	§
KAISER FOUNDATION HEALTH PLAN OF	§
TEXAS; LIBERTY MUTUAL INSURANCE	§
COMPANY; MARKEL INSURANCE COMPANY;	§
METROPOLITAN LIFE INSURANCE COMPANY;	§
MUTUAL OF OMAHA INSURANCE	§
COMPANY; UNITED STATES LETTER	§
CARRIERS MUTUAL BENEFIT ASSOCIATION;	§
NATIONAL FINANCIAL INSURANCE	§
COMPANY; NEW ERA LIFE INSURANCE	§
COMPANY; NEW ERA LIFE	§
INSURANCE COMPANY OF THE MIDWEST;	§
PCA HEALTH PLANS OF TEXAS, INC., D/B/A	§
HUMANA HEALTH PLAN OF TEXAS, INC.;	§
PHYSICIANS MUTUAL INSURANCE	§
COMPANY; PIONEER LIFE	§
INSURANCE COMPANY; PRINCIPAL LIFE	§
INSURANCE COMPANY; PROVIDENT	§
LIFE AND ACCIDENT INSURANCE	§
COMPANY; PRUDENTIAL HEALTH CARE	§
PLAN, INC.; PRUDENTIAL HEALTHCARE	§
AND LIFE INSURANCE COMPANY OF	§
AMERICA; THE PRUDENTIAL INSURANCE	§
COMPANY OF AMERICA, RELIASTAR	§
LIFE INSURANCE COMPANY; RESERVE	§
NATIONAL INSURANCE COMPANY;	§
SIERRA HEALTH AND LIFE INSURANCE	§
COMPANY, INC.; STANDARD LIFE AND	§
ACCIDENT INSURANCE COMPANY;	§
STATE FARM LIFE INSURANCE	§
COMPANY; UNICARE LIFE & HEALTH	§

INSURANCE COMPANY; UNITED AMERICAN §
INSURANCE COMPANY; UNITED §
HEALTHCARE INSURANCE COMPANY; §
UNIVERSAL FIDELITY LIFE INSURANCE §
COMPANY; USAA LIFE INSURANCE §
COMPANY; AND WAUSAU UNDERWRITERS §
INSURANCE COMPANY §

DEFENDANTS' ORIGINAL THIRD-PARTY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW EAST TEXAS MEDICAL CENTER ATHENS ("ETMC-Athens"), EAST TEXAS MEDICAL CENTER REGIONAL HEALTHCARE SYSTEM ("ETMC-RHS"), EAST TEXAS MEDICAL CENTER ("ETMC"), EAST TEXAS MEDICAL CENTER PITTSBURG ("ETMC-Pittsburg"), EAST TEXAS MEDICAL CENTER FAIRFIELD ("ETMC-Fairfield"), EAST TEXAS MEDICAL CENTER RUSK ("ETMC-Rusk"), EAST TEXAS MEDICAL CENTER CROCKETT ("ETMC-Crockett"), EAST TEXAS MEDICAL CENTER JACKSONVILLE ("ETMC-Jacksonville"), EAST TEXAS MEDICAL CENTER CLARKSVILLE ("ETMC-Clarksville"), EAST TEXAS MEDICAL CENTER TRINITY ("ETMC-Trinity"), EAST TEXAS MEDICAL CENTER CARTHAGE ("ETMC-Carthage"), ~~EAST TEXAS MEDICAL CENTER QUITMAN ("ETMC-Quitman")~~, EAST TEXAS MEDICAL CENTER MOUNT VERNON ("ETMC-Mount Vernon"), and EAST TEXAS MEDICAL CENTER GRAND SALINE (ETMC-Grand Saline") (collectively referred to as "Defendants/Third-Party Plaintiffs") and file this their Original Third-Party Petition subject to their Plea in Abatement and Motion to Compel Arbitration which they still assert and insist upon and for same would respectfully show the Court as follows:

I.

Third Party Defendant "Health Carriers"

Defendants/Third-Party Plaintiffs are Texas corporations.

Third-Party Defendants are the following insurance companies and governmental entities, all of which are doing business in the State of Texas:

Aetna Health and Life Insurance Company. Its registered agent, John Shely, may be served at 800 Travis, 4200 Texas Commerce Tower, Houston, Texas, 77002.

Aetna Insurance Company of America. Its registered agent, John B. Shely, may be served at 600 Travis, 4200 Texas Commerce Tower, Houston, Texas, 77002.

American Family Life Assurance Company of Columbus. Its registered agent, C. Brian Cassidy, may be served at 100 Congress Avenue, Suite 300, Austin, Texas, 78701.

American National Insurance Company. Its president, Robert Lee Moody, may be served at One Moody Plaza, Galveston, Texas, 77550.

Bankers Life and Casualty Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

~~Benefit Life Insurance Company. Its president, Keith Leroy Gregory, may be served at~~
300 North Coit Road, Suite 809, Richardson, Texas, 75083.

Christian Fidelity Life Insurance Company. Its president, Cecil Lawrence Barnett, may be served at 2001 Bates Drive, Waxahachie, Texas, 75167.

Cigna Healthcare of Texas, Inc. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Combined Underwriters Life Insurance Company. Its president, Gary Charles Cole, may be served at 307 N. Glenwood, Tyler, Texas, 75702.

Connecticut General Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Employers Health Insurance Company. Its registered agent, Corporation Service Company, may be served at 400 N. St. Paul Street, Dallas, Texas, 75201.

First Health Life & Health Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Fortis Benefits Insurance Company. Its registered agent, Kelly M. Crawford, may be served at 5956 Sherry Lane, Suite 1400, Dallas, Texas, 75225.

Fortis Insurance Company. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

General American Life Insurance Company. Its registered agent, Robert E. Jackson, may be served at 12222 Merit Drive, Suite 1260, LB 36, Dallas, Texas, 75251.

Golden Rule Insurance Company. Its registered agent, Burnie Burner, may be served at 515 Congress, Suite 1500, Austin, Texas, 78701.

The Guardian Life Insurance Company of America. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

Harris Methodist Health Insurance Company. Its president, Patrick Freemont Spears, may be served at 611 Ryan Plaza Drive, Suite 1400, Arlington, Texas, 76011.

Harris Methodist Texas Health Plan, Inc. Its president, Patrick Freemont Spears, may be served at 611 Ryan Plaza Drive, Suite 1090, Arlington, Texas, 76011.

HealthPlan of Texas, Inc. Its registered agent, Fulbright and Jaworski, L.L.P., may be served at 600 Congress Avenue, Suite 2408, Austin, Texas, 78701.

Humana Health Plan of Texas, Inc. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

Jefferson Pilot Lifeamerica Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

John Alden Life Insurance Company. Its registered agent, Prentice-Hall Corporation System, Inc., may be served at 800 Brazos, Austin, Texas, 78701.

John Hancock Life Insurance Company. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Kaiser Foundation Health Plan of Texas. Its president, Deborah Stokes, may be served at 12200 Park Central Drive, Suite 210, Dallas, Texas, 75251.

Liberty Mutual Insurance Company. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Markel Insurance Company. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Donna E. Shalala, in her official capacity as Secretary, United States Department of Health and Human Services and as administrator of the Medicare Program. She may be served with process at 200 Independence Avenue, S.W., Washington, D.C. 20201.

Texas Department of Human Services. Its Commissioner, Eric Bost, may be served at 701 West 51st Street, Austin, Texas 78751.

Metropolitan Life Insurance Company. Its registered agent, Robert E. Wolin, may be served at 1717 Main Street, Suite 3100, Dallas, Texas, 75201.

Mutual of Omaha Insurance Company. Its registered agent, Prentice-Hall Corporation, Inc., may be served at 800 Brazos, Austin, Texas, 78701.

United States Letter Carriers Mutual Benefit Association. Its registered agent, Will D. Davis, may be served at 200 Perry Brooks Building, Austin, Texas, 78701.

National Financial Insurance Company. Its president, Patrick John Mitchell, may be served at 110 West 7th Street, Suite 300, Fort Worth, Texas, 76102.

New Era Life Insurance Company. Its president, Bill Shun-Zer Chen, may be served at P.O. Box 4884, 200 West Lake Park Blvd., Suite 1200, Houston, Texas, 77210.

New Era Life Insurance Company of the Midwest. Its registered agent, Bill Shun-Zer Chen, may be served at 10565 Katy Freeway, 4th Floor, Houston, Texas, 77024.

PCA Health Plans of Texas, Inc, d/b/a Humana Health Plan of Texas, Inc. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

Physicians Mutual Insurance Company. Its registered agent, Hector Deleon, may be served at 701 Brazos, Suite 480, Austin, Texas, 78701.

Pioneer Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Principal Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Provident Life and Accident Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Prudential Health Care Plan, Inc. Its registered agent, Richard Shook, may be served at One Prudential Circle, Mailstop 300, Sugar Land, Texas, 77478.

Prudential Healthcare and Life Insurance Company of America. Its registered agent, Mary Miller, may be served at One Prudential Circle, Mailstop B200, Sugar Land, Texas, 77478.

The Prudential Insurance Company of America. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

Reliastar Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Reserve National Insurance Company. Its registered agent, David L. Moon, may be served at 1600 Airport Freeway, Bedford, Texas, 76022.

Sierra Health and Life Insurance Company, Inc. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Standard Life and Accident Insurance Company. Its registered agent, Charles Dexter Thompson, may be served at One Moody Plaza, Galveston, Texas, 77550.

State Farm Life Insurance Company. Its registered agent, William K. King, Jr., may be served at 8900 Amberglen Blvd., Austin, Texas, 78729.

Unicare Life & Health Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

United American Insurance Company. Its registered agent, CT Corporation System, may be served at 1601 Elm Street, Dallas, Texas, 75201.

United Healthcare Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Universal Fidelity Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

USAA Life Insurance Company. Its president, Edwin Lee Rosane, may be served at 9800 Fredericksburg Road Rm F2E, San Antonio, Texas, 78288.

Wausau Underwriters Insurance Company. Its registered agent, Rick Knight, may be served at 105 Decker Court, Suite 600, Irving, Texas, 75062.

All of the above Third-party Defendants will be referred to collectively as the "Health Carriers."

II.

Plaintiff's Allegations

Plaintiff's Original Petition filed herein against Defendants/Third-Party Plaintiffs makes many vague, broad and wide ranging allegations. Plaintiff alleges that Defendants/Third-Party Plaintiffs mishandled his patient account and the accounts of other persons similarly situated in the following respects, among others:

- A. "Plaintiff was billed for services provided at Defendants facility in Athens, Texas. Defendants also billed Plaintiff's health insurer provider for said services."
- B. "Despite payment and discount resulting from the health insurance provider, full charges were wrongfully required and paid by/on behalf of Plaintiff."
- C. "Defendants. . . wrongfully forwarded Plaintiff's funds to his health insurance provider."

D. “. . . Plaintiff would show Defendants improperly charge patients who have successfully made recovery against third parties, wrongfully forwarding Plaintiff's funds to health insurance companies.”

Plaintiff seeks to sue not only for himself but also for the following class:

“All persons who have or have had a credit balance on their respective account for services rendered by Defendants, or who would have a credit balance but for fictitious charges or adjustments to said accounts since January 1, 1996.”

Defendants/Third Party Plaintiffs have denied all allegations of Plaintiffs.

III.

Role of “Health Carriers”

The Health Carriers are a portion of the health insurance carriers and other similar type entities who made payments for medical care provided to Defendants/Third Party Plaintiffs' patients and who have received refunds due to credit balances. The Health Carriers have made these payments and received these refunds in many respects due to the provisions of certain agreements, contracts and/or plans that are applicable to patients of Defendants/Third Party Plaintiffs. Also, Defendants/Third Party Plaintiffs have agreements and contracts with Health Carriers, many of which give rise to the “discounts” spoken of in Plaintiff's pleadings. Defendants/Third Party Plaintiffs strive to comply and do comply with such agreements, contracts and/or plans in their billing practices. Plaintiff's allegations, if followed to their logical conclusion, take the position that Defendants/Third Party Plaintiffs should not comply with such agreements, contracts and/or plans. In particular, Plaintiff seeks effectively to destroy certain subrogation rights of Health Carriers. Defendants/Third Party Plaintiffs allege that Health

Carriers have requested, required, demanded and/or accepted refund payments from Defendants/Third Party Plaintiffs. Defendants/Third Party Plaintiffs would show that many, if not all, of the health insurance plans issued by the Health Carriers and covering members of the putative class are employee benefit plans governed by the provisions of 29 USC 1302 *et seq.*, commonly known as ERISA.

IV.

Contribution/Indemnity Claim

Defendants/Third-Party Plaintiffs expressly deny that they are liable for any damages whatsoever and assert that they acted properly in refunding the amount of any overpayments directly to the health insurance carrier that made the payment. However, in the unlikely event that the Plaintiff/putative class obtains a judgment against them, then Defendants/Third-Party Plaintiffs would show that they are entitled to contribution and/or indemnity from the Health Carriers that received such refunds. By claiming entitlement to any credit balances, Plaintiff and the putative class are asserting that they are entitled to the benefit of any payments (whatsoever) made by their health carriers as well as any third-party recovery and that Defendants/Third-party Plaintiffs erroneously refunded any credit balance caused by Health Carrier payments. Although Defendants/Third-party Plaintiffs specifically deny that such refunds were improper, if that is the case, then pursuant to the terms of their health plans, the Health Carriers are liable to Defendants/Third-party Plaintiffs for the payments that were erroneously refunded. Thus, if Defendants/Third-party Plaintiffs are found liable to Plaintiffs, then, by this third-party action, Defendants/Third-party Plaintiffs seek recovery from the Health Carriers for all amounts erroneously refunded for any reason to Health Carriers.

V.

Declaratory Relief

Defendants/Third Party Plaintiffs petition the Court pursuant to the Declaratory Judgments Act, Chapter 37 of the Texas Civil Practice and Remedies Code of Texas, for the construction of the agreements, contracts and/or plans described in paragraph III above. Defendants/Third Party Plaintiffs have striven to refund credit balances in accordance with the provisions of said agreements, contracts and/or plans and have refunded such credit balances as requested, required, demanded and/or accepted by Health Carriers. Instances of refunds such as those in question in this suit occur on a continuing basis. Defendants/Third Party Plaintiffs request this Court to declare that such refunds are being made in accordance with the provisions of the applicable contracts, agreements and/or plans.

VI.

Prayer

WHEREFORE, PREMISES CONSIDERED, Defendants/Third-Party Plaintiffs request that the Health Carriers be cited to appear and answer herein and upon final trial that Plaintiff ~~take nothing and that the Court declare that the refunds in question are being made in~~ accordance with the provisions of the applicable contracts, agreements and/or plans or, alternatively, that Defendants/Third-Party Plaintiffs have judgment against the Health Carriers for the amount of all refunded credit balances, plus prejudgment and postjudgment interest as provided by law, costs of suit, and such other and further relief to which they may be justly entitled.

Facsimile: (903) 593-0846

By:

Miss Jones

MICHAEL E. JONES

State Bar No. 10929400

JAY N. GREEN

State Bar No. 08356300

E. GLENN THAMES, JR.

State Bar No. 00785097

Attorneys for Defendants/Third-Party Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon Plaintiff's counsel of record by certified United States Mail, return receipt requested, on this the 3 day of July, 2000.

[illegible]

HENDERSON COUNTY, TEXAS



I. DISCOVERY LEVEL

Plaintiff will conduct discovery under Level 2 of Rule 190.3.

II. PARTIES

Plaintiff is an individual residing in Henderson County, Texas

Defendant EAST TEXAS MEDICAL CENTER, ATHENS is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER REGIONAL HEALTHCARE SYSTEM is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER PITTSBURGH is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER FAIRFIELD is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER RUSK is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G.

Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER CROCKETT is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER JACKSONVILLE is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER CLARKSVILLE is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER TRINITY is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER CARTHAGE is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER QUITMAN is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER MOUNT VERNON is a Not for Profit Corporation and may be served with process by serving its registered agent,

Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER GRAND SALINE is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

III. FACTUAL BACKGROUND

Upon information and belief, Plaintiff asserts the following facts.

Plaintiff was a patient at Defendants' facility located in Athens, Henderson County, Texas. Plaintiff was billed for services provided at Defendants' facility in Athens, Texas. Defendants also billed Plaintiff's health insurance provider for said services. Payment was made by Plaintiff's health insurance provider and discount was given to Plaintiff on the bill. Despite payment and discount resulting from the health insurance provider, full charges were wrongfully required and paid by/on behalf of Plaintiff. Accordingly, Defendants have been overpaid for said services, with said overpayment resulting in a credit balance on Plaintiff's account.

Defendants wrongfully converted said funds for their own use and benefit to the detriment of Plaintiff or, alternatively, wrongfully forwarded Plaintiff's funds to his health insurance provider.

Plaintiff would show that Defendants routinely bill their patients and their insurers for the same services which results in overpayment and credit balances to patients' accounts, which Defendants convert for their own use and benefit to the detriment of Plaintiff and persons similarly situated to Plaintiff. Alternatively, Plaintiff

would show Defendants improperly charge patients who have successfully made recovery against third parties, wrongfully forwarding Plaintiffs funds to health insurance companies.

IV.

CLASS ALLEGATIONS

Plaintiff brings this action individually on behalf of and all others similarly situated. Plaintiff seeks to certify the following class:

All persons who have or have had a credit balance on their respective account for services rendered by Defendants, or who would have a credit balance but for fictitious charges or adjustments to said accounts since January 1, 1996.

All elements for class certification with Plaintiff as the class representative have been met.

V. SPECIFIC CLAIMS AND CAUSES OF ACTION

A. DECEPTIVE TRADE PRACTICES ACT

Plaintiff and the putative class are consumers as the term is defined in Section 17.45 of the Texas Deceptive Trade Practices and Consumer Protection Act.

The representations, acts, conduct, and omissions of Defendants constitute false, misleading, and deceptive acts or practices in violation of the Deceptive Trade Practices and Consumer Protection Act. Defendants' actions were done intentionally and knowingly.

B. FRAUD

Defendants have defrauded the Plaintiff and the putative class.

C. CONVERSION

Defendants have wrongfully converted funds for their own use and benefit to the detriment of Plaintiff.

D. CONSPIRACY

Upon information and belief, Plaintiff asserts at all times referred to herein and relating to Plaintiff, Defendants' employees/agents and others were acting individually and/or within their course and scope of employment and as agents for and with the approval of superiors, and each other. The actions, misrepresentations, statutory violations, breach of duties, and fraud of the Defendants were done with such frequency as to indicate intent and a general business practice. Upon information and belief, Plaintiff asserts Defendants are and were inextricably intertwined, jointly plotted, conspired, and colluded together so as to be one and are each therefore jointly and severally liable to Plaintiff for their actions. Upon information and belief, Plaintiff asserts Defendants are engaged in a civil conspiracy to defraud.

VI.

CONDITIONS PRECEDENT

All conditions precedent have occurred or have been waived.

VII.

ATTORNEY'S FEES

Plaintiff is entitled to reasonable and necessary attorney's fees.

VIII.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays for the following:

- a. economic damages for Plaintiff and all members of the plaintiff classes in an amount equal to any overpayment on Plaintiffs' accounts;
- b. economic damages for Plaintiff and all members of the plaintiff classes in an amount equal to the amount of fictitious adjustments to Plaintiffs' accounts;
- c. prejudgment and post-judgment interest as provided by law;
- d. court costs and attorneys' fees as authorized under the Texas Deceptive Trade Practices Act;
- e. a permanent injunction as authorized under the Texas Deceptive Trade Practices Act;
- f. restitution and/or restoration of property as authorized under the Texas Deceptive Trade Practices Act;
- g. additional, exemplary or punitive damages; and
- h. any other relief, at law or in equity, to which the Plaintiff and members of the plaintiff classes may show themselves justly entitled.

Respectfully submitted,

SHAW & LEMON

By: D. Brent Lemon

D. Brent Lemon

State Bar No. 12195900

2723 Fairmount

Dallas, Texas 75201

214-754-7110

214-754-7115 FAX NO.

ATTORNEYS FOR PLAINTIFF

Mr. Charles A. Clark
CLARK, LEA, RUTTER & LOGSON

604 Woldert

Tyler, Texas 75702

903-593-2514

903-595-1294 FAX NO.

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been sent to Mike Jones via facsimile on the 5th day of May, 2000.

D. Brent Lemon

D. Brent Lemon

STATE OF TEXAS
COUNTY OF HENDERSON
I, BETTY RAMSEY, Clerk of the District Court in and for Henderson County, Texas, do hereby certify that the above and foregoing is a true and correct copy of _____
_____ filed among the papers in _____
_____ in Cause No. _____
_____ in the office of the _____
District Clerk of Henderson County, Texas, at Abilene, Texas, on the _____ day of _____, 2000.
GIVEN UNDER MY HAND AND SEAL OF OFFICE at Abilene, Texas, on _____ day of _____, 2000.
Clerk of the _____
Henderson County, Texas
By: _____

COURT OF

§ §

HENDERSON COUNTY, TEXAS

3RD JUDICIAL DISTRICT

AETNA HEALTH AND LIFE
INSURANCE COMPANY, ET AL.

NOTICE OF REMOVAL TO FEDERAL COURT

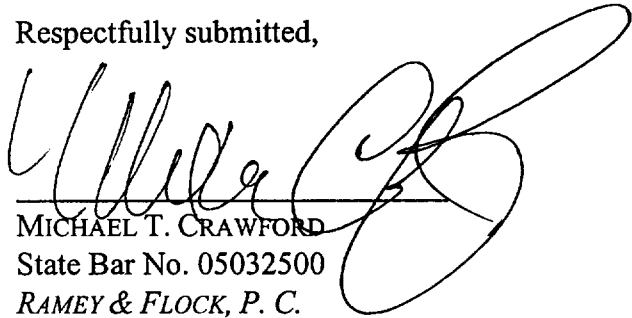
Mr. Charles Clark
Clark, Lea, Rutter & Logson
P.O. Box 98
Tyler, Texas 75710

Notice of Filing Notice of Removal

Third-Party Defendant, COMBINED UNDERWRITERS LIFE INSURANCE COMPANY, filed in the United States District Court for the Eastern District of Texas, Tyler Division, a Notice of Removal of the above captioned action from this Court to the United States District Court for the Eastern District of Texas, Tyler Division. A copy of the Notice is attached hereto.

DATED: July 20, 2000.

Respectfully submitted,



MICHAEL T. CRAWFORD

State Bar No. 05032500

RAMEY & FLOCK, P. C.

500 First Place

P. O. Box 629

Tyler, Texas 75710

(903) 597-3301

Telecopier -- (903) 597-2413

ATTORNEY FOR DEFENDANT,

COMBINED UNDERWRITERS LIFE

INSURANCE COMPANY

Of Counsel:

RAMEY & FLOCK, P. C.

500 First Place

P. O. Box 629

Tyler, Texas 75710

(903) 597-3301

Telecopier -- (903) 597-2413

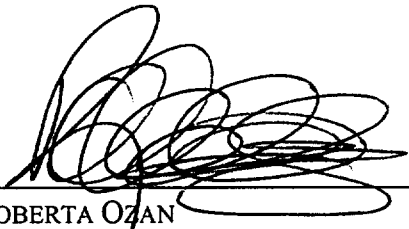
CERTIFICATE OF SERVICE

I hereby certify on this 20th day of July, 2000, a true and correct copy of the foregoing instrument was placed in the United States Mail, Return Receipt Requested, with proper postage affixed thereon, to:

Mr. D. Brent Lemon
Shaw & Lemon
2723 Fairmount
Dallas, Texas 75201

Mr. Charles Clark
Clark, Lea, Rutter, Logson
P.O. Box 98
Tyler, Texas 75710

Mr. Mike Jones
Potter, Minton, Roberts
Davis & Jones, P.C.
P.O. Box 359
Tyler, Texas 75710



ROBERTA OZAN
LEGAL ASSISTANT TO MICHAEL T. CRAWFORD

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

NATHAN L. JACKSON, Individually and
on behalf of a putative class of similarly
situated individuals

v.

EAST TEXAS MEDICAL CENTER ATHENS,
EAST TEXAS MEDICAL CENTER
REGIONAL HEALTHCARE SYSTEM, EAST
TEXAS MEDICAL CENTER, EAST TEXAS
MEDICAL CENTER PITTSBURGH, EAST
TEXAS MEDICAL CENTER FAIRFIELD,
EAST TEXAS MEDICAL CENTER RUSK,
EAST TEXAS MEDICAL CENTER
CROCKETT, EAST TEXAS MEDICAL
CENTER JACKSONVILLE, EAST TEXAS
MEDICAL CENTER CLARKSVILLE, EAST
TEXAS MEDICAL CENTER TRINITY, EAST
TEXAS MEDICAL CENTER CARTHAGE,
EAST TEXAS MEDICAL CENTER
QUITMAN, EAST TEXAS MEDICAL
CENTER MOUNT VERNON, AND EAST
TEXAS MEDICAL CENTER GRAND
SALINE

v.

AETNA HEALTH AND LIFE INSURANCE
COMPANY; AETNA INSURANCE
COMPANY OF AMERICA, AMERICAN
FAMILY LIFE ASSURANCE COMPANY OF
COLUMBUS; AMERICAN NATIONAL
INSURANCE COMPANY; BANKERS LIFE
AND CASUALTY COMPANY; BENEFIT
LIFE INSURANCE COMPANY; CHRISTIAN
FIDELITY LIFE INSURANCE COMPANY;
CIGNA HEALTH-CARE OF TEXAS, INC.;
COMBINED UNDERWRITERS LIFE
INSURANCE COMPANY; CONNECTICUT
GENERAL LIFE INSURANCE COMPANY;

CIVIL ACTION NO.



EMPLOYERS HEALTH INSURANCE	§
COMPANY; FIRST HEALTH LIFE &	§
HEALTH INSURANCE COMPANY; FORTIS	§
BENEFITS INSURANCE COMPANY;	§
FORTIS INSURANCE COMPANY;	§
GENERAL AMERICAN LIFE INSURANCE	§
COMPANY; GOLDEN RULE INSURANCE	§
COMPANY; THE GUARDIAN LIFE	§
INSURANCE COMPANY OF AMERICA;	§
HARRIS METHODIST HEALTH	§
INSURANCE COMPANY; HARRIS	§
METHODIST TEXAS HEALTH PLAN, INC.;	§
HEALTHPLAN OF TEXAS, INC., HUMANA	§
HEALTH PLAN OF TEXAS, INC.;	§
JEFFERSON PILOT LIFE-AMERICA	§
INSURANCE COMPANY; JOHN ALDEN	§
LIFE INSURANCE COMPANY; JOHN	§
HANCOCK LIFE INSURANCE COMPANY;	§
KAISER FOUNDATION HEALTH PLAN OF	§
TEXAS; LIBERTY MUTUAL INSURANCE	§
COMPANY; MARKEL INSURANCE	§
COMPANY; METROPOLITAN LIFE	§
INSURANCE COMPANY; MUTUAL OF	§
OMAHA INSURANCE COMPANY; UNITED	§
STATES LETTER CARRIERS MUTUAL	§
BENEFIT ASSOCIATION; NATIONAL	§
FINANCIAL INSURANCE COMPANY; NEW	§
ERA LIFE INSURANCE COMPANY; NEW	§
ERA LIFE INSURANCE COMPANY OF THE	§
MIDWEST; PCA HEALTH PLANS OF	§
TEXAS, INC. D/B/A HUMANA HEALTH	§
PLAN OF TEXAS, INC.; PHYSICIANS	§
MUTUAL INSURANCE COMPANY;	§
PIONEER LIFE INSURANCE COMPANY;	§
PRINCIPAL LIFE INSURANCE COMPANY;	§
PROVIDENT LIFE AND ACCIDENT	§
INSURANCE COMPANY; PRUDENTIAL	§
HEALTH CARE PLAN, INC.; PRUDENTIAL	§
HEALTHCARE AND LIFE INSURANCE	§
COMPANY OF AMERICA; THE	§
PRUDENTIAL INSURANCE COMPANY OF	§
AMERICA;	§

RELIASTAR LIFE INSURANCE COMPANY;	§
RESERVE NATIONAL INSURANCE	§
COMPANY; SIERRA HEALTH AND LIFE	§
INSURANCE COMPANY, INC.; STANDARD	§
LIFE AND ACCIDENT INSURANCE	§
COMPANY; STATE FARM LIFE	§
INSURANCE COMPANY; UNICARE LIFE &	§
HEALTH INSURANCE COMPANY; UNITED	§
AMERICAN INSURANCE COMPANY;	§
UNITED HEALTHCARE INSURANCE	§
COMPANY; UNIVERSAL FIDELITY LIFE	§
INSURANCE COMPANY; USAA LIFE	§
INSURANCE COMPANY; AND WAUSAU	§
UNDERWRITERS INSURANCE COMPANY	§

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§1441, 1446, as amended by the Judicial Improvements and Access to Justice Act, Pub. Law 100-702 (Nov. 19, 1988), Third-Party Defendant, COMBINED UNDERWRITERS LIFE INSURANCE COMPANY (hereinafter "CU"), by its undersigned counsel, hereby removes this action from the 3rd Judicial District Court of Henderson County, Texas, and as grounds therefor, CU respectfully states:

1. On or about July 3, 2000, Defendant/Third-Party Plaintiffs, EAST TEXAS MEDICAL CENTER ATHENS, et al, filed a civil petition against Third-Party Defendant, COMBINED UNDERWRITERS LIFE INSURANCE COMPANY in the 3RD Judicial District Court of Henderson County, Texas. A copy of the "*Defendants' Original Third-Party Petition*" from the State Court case is attached hereto as Exhibit "A" and incorporated herein by reference as if fully set forth at length.

2. This Notice of Removal is timely filed in that it is filed within thirty (30) days after receipt by CU of service of process upon CU, as required by 28 U.S.C. §1446(b).

3. No proceedings have occurred in this action asserting claims other than the following filings: Plaintiff's Original Petition filed on or about May 8, 2000; Defendants, "ETMC-Athens", et al's Plea in Abatement and Original Answer to Plaintiff's Original Petition filed June 5, 2000; Defendants' Original Third-Party Petition which was filed on July 3, 2000 and CU's Original Answer on or about July 20, 2000. A certified copy of Plaintiff's Original Petition is attached hereto as Exhibit "B."

4. This action may be removed to this Court pursuant to 28 U.S.C. §1441(b) because it is a civil action over which the Federal District Courts have jurisdiction based upon a federal question.

5. This action is within the original jurisdiction of this Court under 28 U.S.C. § 1331 involving an ERISA action, 29 U.S.C. § 1001, et seq.

6. A copy of this Notice of Removal was filed with the County Clerk of Henderson County, Texas, on July 20, 2000, as required by 28 U.S.C. §1446(d).

WHEREFORE, the Petitioners pray that the above action now pending in the 3rd Judicial District Court of Henderson County, Texas be removed therefrom to this Court.

Respectfully submitted,


MICHAEL T. CRAWFORD, *Attorney in Charge

State Bar No. 05032500

RAMEY & FLOCK, P.C.

500 First Place

P. O. Box 629

Tyler, Texas 75710

(903) 597-3301

(903) 597-2413 - Telecopier

Of Counsel:

Ramey & Flock, P.C.
500 First Place * P. O. Box 629
Tyler, Texas 75710
(903) 597-3301* (903) 597-2413

Attorneys for Third-Party Defendants,
COMBINED UNDERWRITERS LIFE
INSURANCE COMPANY

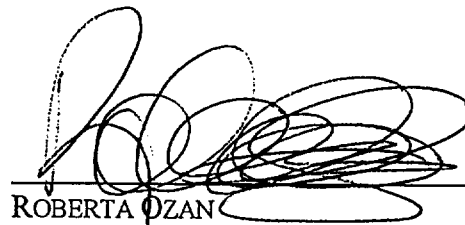
CERTIFICATE OF SERVICE

I hereby certify on this 20th day of July, 2000, a true and correct copy of the foregoing instrument was placed in the United States Certified Mail, Return Receipt Requested, with proper postage affixed thereon, to:

Mr. Mike Jones
POTTER MINTON
P. O. Box 359
Tyler, Texas 75710

Mr. D. Brent Lemon
SHAW & LEMON
2723 Fairmount
Dallas, Texas 75201

Mr. Charles Clark
CLARK, LEA, RUTTER & LOGSON
P. O. Box 98
Tyler, Texas 75710

A handwritten signature in black ink, appearing to read 'Roberta Ozan', is written over a horizontal line.

ROBERTA OZAN
LEGAL ASSISTANT TO MICHAEL T. CRAWFORD

7-3-00

3421-11
Pldg

NO. 00-064

NATHAN L. JACKSON, Individually
and on behalf of a putative class of
Similarly situated individuals

v.

EAST TEXAS MEDICAL CENTER ATHENS,
EAST TEXAS MEDICAL CENTER REGIONAL
HEALTHCARE SYSTEM, EAST TEXAS
MEDICAL CENTER, EAST TEXAS MEDICAL
CENTER PITTSBURGH, EAST TEXAS
MEDICAL CENTER FAIRFIELD, EAST
TEXAS MEDICAL CENTER RUSK, EAST
TEXAS MEDICAL CENTER CROCKETT,
EAST TEXAS MEDICAL CENTER
JACKSONVILLE, EAST TEXAS MEDICAL
CENTER CLARKSVILLE, EAST TEXAS
MEDICAL CENTER TRINITY, EAST
TEXAS MEDICAL CENTER CARTHAGE,
EAST TEXAS MEDICAL CENTER
QUITMAN, EAST TEXAS MEDICAL
CENTER MOUNT VERNON, AND
EAST TEXAS MEDICAL CENTER GRAND
SALINE

v.

AETNA HEALTH AND LIFE INSURANCE
COMPANY; AETNA INSURANCE COMPANY
OF AMERICA; AMERICAN FAMILY LIFE
ASSURANCE COMPANY OF COLUMBUS;
AMERICAN NATIONAL INSURANCE
COMPANY; BANKERS LIFE AND CASUALTY
COMPANY; BENEFIT LIFE INSURANCE
COMPANY; CHRISTIAN FIDELITY
LIFE INSURANCE COMPANY; CIGNA HEALTH-
CARE OF TEXAS, INC.; COMBINED
UNDERWRITERS LIFE INSURANCE
COMPANY; CONNECTICUT GENERAL LIFE
INSURANCE COMPANY; EMPLOYERS
HEALTH INSURANCE COMPANY; FIRST
HEALTH LIFE & HEALTH INSURANCE

§ IN THE DISTRICT COURT OF

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HENDERSON COUNTY, TEXAS

3RD JUDICIAL DISTRICT

FILED FOR RECORD
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BETTY BRADY
DISTRICT CLERK
HENDERSON COUNTY, TEXAS



COMPANY; FORTIS BENEFITS INSURANCE	§
COMPANY; FORTIS INSURANCE COMPANY;	§
GENERAL AMERICAN LIFE INSURANCE	§
COMPANY; GOLDEN RULE INSURANCE	§
COMPANY; THE GUARDIAN LIFE	§
INSURANCE COMPANY OF AMERICA;	§
HARRIS METHODIST HEALTH INSURANCE	§
COMPANY; HARRIS METHODIST TEXAS	§
HEALTH PLAN, INC.; HEALTHPLAN OF	§
TEXAS, INC. HUMANA HEALTH PLAN OF	§
TEXAS, INC.; JEFFERSON PILOT LIFE-	§
AMERICA INSURANCE COMPANY; JOHN	§
ALDEN LIFE INSURANCE COMPANY; JOHN	§
HANCOCK LIFE INSURANCE COMPANY;	§
KAISER FOUNDATION HEALTH PLAN OF	§
TEXAS; LIBERTY MUTUAL INSURANCE	§
COMPANY; MARKEL INSURANCE COMPANY;	§
METROPOLITAN LIFE INSURANCE COMPANY;	§
MUTUAL OF OMAHA INSURANCE	§
COMPANY; UNITED STATES LETTER	§
CARRIERS MUTUAL BENEFIT ASSOCIATION;	§
NATIONAL FINANCIAL INSURANCE	§
COMPANY; NEW ERA LIFE INSURANCE	§
COMPANY; NEW ERA LIFE	§
INSURANCE COMPANY OF THE MIDWEST;	§
PCA HEALTH PLANS OF TEXAS, INC., D/B/A	§
HUMANA HEALTH PLAN OF TEXAS, INC.;	§
PHYSICIANS MUTUAL INSURANCE	§
COMPANY; PIONEER LIFE	§
INSURANCE COMPANY; PRINCIPAL LIFE	§
INSURANCE COMPANY; PROVIDENT	§
LIFE AND ACCIDENT INSURANCE	§
COMPANY; PRUDENTIAL HEALTH CARE	§
PLAN, INC.; PRUDENTIAL HEALTHCARE	§
AND LIFE INSURANCE COMPANY OF	§
AMERICA; THE PRUDENTIAL INSURANCE	§
COMPANY OF AMERICA, RELIASTAR	§
LIFE INSURANCE COMPANY; RESERVE	§
NATIONAL INSURANCE COMPANY;	§
SIERRA HEALTH AND LIFE INSURANCE	§
COMPANY, INC.; STANDARD LIFE AND	§
ACCIDENT INSURANCE COMPANY;	§
STATE FARM LIFE INSURANCE	§
COMPANY; UNICARE LIFE & HEALTH	§

INSURANCE COMPANY; UNITED AMERICAN §
INSURANCE COMPANY; UNITED §
HEALTHCARE INSURANCE COMPANY; §
UNIVERSAL FIDELITY LIFE INSURANCE §
COMPANY; USAA LIFE INSURANCE §
COMPANY; AND WAUSAU UNDERWRITERS §
INSURANCE COMPANY §

DEFENDANTS' ORIGINAL THIRD-PARTY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW EAST TEXAS MEDICAL CENTER ATHENS ("ETMC-Athens"), EAST TEXAS MEDICAL CENTER REGIONAL HEALTHCARE SYSTEM ("ETMC-RHS"), EAST TEXAS MEDICAL CENTER ("ETMC"), EAST TEXAS MEDICAL CENTER PITTSBURG ("ETMC-Pittsburg"), EAST TEXAS MEDICAL CENTER FAIRFIELD ("ETMC-Fairfield"), EAST TEXAS MEDICAL CENTER RUSK ("ETMC-Rusk"), EAST TEXAS MEDICAL CENTER CROCKETT ("ETMC-Crockett"), EAST TEXAS MEDICAL CENTER JACKSONVILLE ("ETMC-Jacksonville"), EAST TEXAS MEDICAL CENTER CLARKSVILLE ("ETMC-Clarksville"), EAST TEXAS MEDICAL CENTER TRINITY ("ETMC-Trinity"), EAST TEXAS MEDICAL CENTER CARTHAGE ("ETMC-Carthage"), ~~EAST TEXAS MEDICAL CENTER QUITMAN ("ETMC-Quitman")~~, EAST TEXAS MEDICAL CENTER MOUNT VERNON ("ETMC-Mount Vernon"), and EAST TEXAS MEDICAL CENTER GRAND SALINE (ETMC-Grand Saline") (collectively referred to as "Defendants/Third-Party Plaintiffs") and file this their Original Third-Party Petition subject to their Plea in Abatement and Motion to Compel Arbitration which they still assert and insist upon and for same would respectfully show the Court as follows:

I.

Third Party Defendant "Health Carriers"

Defendants/Third-Party Plaintiffs are Texas corporations.

Third-Party Defendants are the following insurance companies and governmental entities, all of which are doing business in the State of Texas:

Aetna Health and Life Insurance Company. Its registered agent, John Shely, may be served at 800 Travis, 4200 Texas Commerce Tower, Houston, Texas, 77002.

Aetna Insurance Company of America. Its registered agent, John B. Shely, may be served at 600 Travis, 4200 Texas Commerce Tower, Houston, Texas, 77002.

American Family Life Assurance Company of Columbus. Its registered agent, C. Brian Cassidy, may be served at 100 Congress Avenue, Suite 300, Austin, Texas, 78701.

American National Insurance Company. Its president, Robert Lee Moody, may be served at One Moody Plaza, Galveston, Texas, 77550.

Bankers Life and Casualty Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

~~Benefit Life Insurance Company. Its president, Keith Leroy Gregory, may be served at~~
300 North Coit Road, Suite 809, Richardson, Texas, 75083.

Christian Fidelity Life Insurance Company. Its president, Cecil Lawrence Barnett, may be served at 2001 Bates Drive, Waxahachie, Texas, 75167.

Cigna Healthcare of Texas, Inc. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Combined Underwriters Life Insurance Company. Its president, Gary Charles Cole, may be served at 307 N. Glenwood, Tyler, Texas, 75702.

Connecticut General Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Employers Health Insurance Company. Its registered agent, Corporation Service Company, may be served at 400 N. St. Paul Street, Dallas, Texas, 75201.

First Health Life & Health Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Fortis Benefits Insurance Company. Its registered agent, Kelly M. Crawford, may be served at 5956 Sherry Lane, Suite 1400, Dallas, Texas, 75225.

Fortis Insurance Company. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

General American Life Insurance Company. Its registered agent, Robert E. Jackson, may be served at 12222 Merit Drive, Suite 1260, LB 36, Dallas, Texas, 75251.

Golden Rule Insurance Company. Its registered agent, Burnie Burner, may be served at 515 Congress, Suite 1500, Austin, Texas, 78701.

The Guardian Life Insurance Company of America. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

Harris Methodist Health Insurance Company. Its president, Patrick Freemont Spears, may be served at 611 Ryan Plaza Drive, Suite 1400, Arlington, Texas, 76011.

Harris Methodist Texas Health Plan, Inc. Its president, Patrick Freemont Spears, may be served at 611 Ryan Plaza Drive, Suite 1090, Arlington, Texas, 76011.

HealthPlan of Texas, Inc. Its registered agent, Fulbright and Jaworski, L.L.P., may be served at 600 Congress Avenue, Suite 2408, Austin, Texas, 78701.

Humana Health Plan of Texas, Inc. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

Jefferson Pilot Lifeamerica Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

John Alden Life Insurance Company. Its registered agent, Prentice-Hall Corporation System, Inc., may be served at 800 Brazos, Austin, Texas, 78701.

John Hancock Life Insurance Company. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Kaiser Foundation Health Plan of Texas. Its president, Deborah Stokes, may be served at 12200 Park Central Drive, Suite 210, Dallas, Texas, 75251.

Liberty Mutual Insurance Company. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Markel Insurance Company. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Donna E. Shalala, in her official capacity as Secretary, United States Department of Health and Human Services and as administrator of the Medicare Program. She may be served with process at 200 Independence Avenue, S.W., Washington, D.C. 20201.

Texas Department of Human Services. Its Commissioner, Eric Bost, may be served at 701 West 51st Street, Austin, Texas 78751.

Metropolitan Life Insurance Company. Its registered agent, Robert E. Wolin, may be served at 1717 Main Street, Suite 3100, Dallas, Texas, 75201.

Mutual of Omaha Insurance Company. Its registered agent, Prentice-Hall Corporation, Inc., may be served at 800 Brazos, Austin, Texas, 78701.

United States Letter Carriers Mutual Benefit Association. Its registered agent, Will D. Davis, may be served at 200 Perry Brooks Building, Austin, Texas, 78701.

National Financial Insurance Company. Its president, Patrick John Mitchell, may be served at 110 West 7th Street, Suite 300, Fort Worth, Texas, 76102.

New Era Life Insurance Company. Its president, Bill Shun-Zer Chen, may be served at P.O. Box 4884, 200 West Lake Park Blvd., Suite 1200, Houston, Texas, 77210.

New Era Life Insurance Company of the Midwest. Its registered agent, Bill Shun-Zer Chen, may be served at 10565 Katy Freeway, 4th Floor, Houston, Texas, 77024.

PCA Health Plans of Texas, Inc, d/b/a Humana Health Plan of Texas, Inc. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

Physicians Mutual Insurance Company. Its registered agent, Hector Deleon, may be served at 701 Brazos, Suite 480, Austin, Texas, 78701.

Pioneer Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Principal Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Provident Life and Accident Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Prudential Health Care Plan, Inc. Its registered agent, Richard Shook, may be served at One Prudential Circle, Mailstop 300, Sugar Land, Texas, 77478.

Prudential Healthcare and Life Insurance Company of America. Its registered agent, Mary Miller, may be served at One Prudential Circle, Mailstop B200, Sugar Land, Texas, 77478.

The Prudential Insurance Company of America. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

Reliastar Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Reserve National Insurance Company. Its registered agent, David L. Moon, may be served at 1600 Airport Freeway, Bedford, Texas, 76022.

Sierra Health and Life Insurance Company, Inc. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Standard Life and Accident Insurance Company. Its registered agent, Charles Dexter Thompson, may be served at One Moody Plaza, Galveston, Texas, 77550.

State Farm Life Insurance Company. Its registered agent, William K. King, Jr., may be served at 8900 Amberglen Blvd., Austin, Texas, 78729.

Unicare Life & Health Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

United American Insurance Company. Its registered agent, CT Corporation System, may be served at 1601 Elm Street, Dallas, Texas, 75201.

United Healthcare Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

Universal Fidelity Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

USAA Life Insurance Company. Its president, Edwin Lee Rosane, may be served at 9800 Fredericksburg Road Rm F2E, San Antonio, Texas, 78288.

Wausau Underwriters Insurance Company. Its registered agent, Rick Knight, may be served at 105 Decker Court, Suite 600, Irving, Texas, 75062.

All of the above Third-party Defendants will be referred to collectively as the "Health Carriers."

II.

Plaintiff's Allegations

Plaintiff's Original Petition filed herein against Defendants/Third-Party Plaintiffs makes many vague, broad and wide ranging allegations. Plaintiff alleges that Defendants/Third-Party Plaintiffs mishandled his patient account and the accounts of other persons similarly situated in the following respects, among others:

- A. "Plaintiff was billed for services provided at Defendants facility in Athens, Texas. Defendants also billed Plaintiff's health insurer provider for said services."
- B. "Despite payment and discount resulting from the health insurance provider, full charges were wrongfully required and paid by/on behalf of Plaintiff."
- C. "Defendants. . . wrongfully forwarded Plaintiff's funds to his health insurance provider."

D. "... Plaintiff would show Defendants improperly charge patients who have successfully made recovery against third parties, wrongfully forwarding Plaintiff's funds to health insurance companies."

Plaintiff seeks to sue not only for himself but also for the following class:

"All persons who have or have had a credit balance on their respective account for services rendered by Defendants, or who would have a credit balance but for fictitious charges or adjustments to said accounts since January 1, 1996."

Defendants/Third Party Plaintiffs have denied all allegations of Plaintiffs.

III.

Role of "Health Carriers"

The Health Carriers are a portion of the health insurance carriers and other similar type entities who made payments for medical care provided to Defendants/Third Party Plaintiffs' patients and who have received refunds due to credit balances. The Health Carriers have made these payments and received these refunds in many respects due to the provisions of certain agreements, contracts and/or plans that are applicable to patients of Defendants/Third Party Plaintiffs. Also, Defendants/Third Party Plaintiffs have agreements and contracts with Health Carriers, many of which give rise to the "discounts" spoken of in Plaintiff's pleadings. Defendants/Third Party Plaintiffs strive to comply and do comply with such agreements, contracts and/or plans in their billing practices. Plaintiff's allegations, if followed to their logical conclusion, take the position that Defendants/Third Party Plaintiffs should not comply with such agreements, contracts and/or plans. In particular, Plaintiff seeks effectively to destroy certain subrogation rights of Health Carriers. Defendants/Third Party Plaintiffs allege that Health

Carriers have requested, required, demanded and/or accepted refund payments from Defendants/Third Party Plaintiffs. Defendants/Third Party Plaintiffs would show that many, if not all, of the health insurance plans issued by the Health Carriers and covering members of the putative class are employee benefit plans governed by the provisions of 29 USC 1302 *et seq.*, commonly known as ERISA.

IV.

Contribution/Indemnity Claim

Defendants/Third-Party Plaintiffs expressly deny that they are liable for any damages whatsoever and assert that they acted properly in refunding the amount of any overpayments directly to the health insurance carrier that made the payment. However, in the unlikely event that the Plaintiff/putative class obtains a judgment against them, then Defendants/Third-Party Plaintiffs would show that they are entitled to contribution and/or indemnity from the Health Carriers that received such refunds. By claiming entitlement to any credit balances, Plaintiff and the putative class are asserting that they are entitled to the benefit of any payments (whatsoever) made by their health carriers as well as any third-party recovery and that Defendants/Third-party Plaintiffs erroneously refunded any credit balance caused by Health Carrier payments. Although Defendants/Third-party Plaintiffs specifically deny that such refunds were improper, if that is the case, then pursuant to the terms of their health plans, the Health Carriers are liable to Defendants/Third-party Plaintiffs for the payments that were erroneously refunded. Thus, if Defendants/Third-party Plaintiffs are found liable to Plaintiffs, then, by this third-party action, Defendants/Third-party Plaintiffs seek recovery from the Health Carriers for all amounts erroneously refunded for any reason to Health Carriers.

V.

Declaratory Relief

Defendants/Third Party Plaintiffs petition the Court pursuant to the Declaratory Judgments Act, Chapter 37 of the Texas Civil Practice and Remedies Code of Texas, for the construction of the agreements, contracts and/or plans described in paragraph III above. Defendants/Third Party Plaintiffs have striven to refund credit balances in accordance with the provisions of said agreements, contracts and/or plans and have refunded such credit balances as requested, required, demanded and/or accepted by Health Carriers. Instances of refunds such as those in question in this suit occur on a continuing basis. Defendants/Third Party Plaintiffs request this Court to declare that such refunds are being made in accordance with the provisions of the applicable contracts, agreements and/or plans.


VI.

Prayer

WHEREFORE, PREMISES CONSIDERED, Defendants/Third-Party Plaintiffs request that the Health Carriers be cited to appear and answer herein and upon final trial that Plaintiff ~~take nothing and that the Court declare that the refunds in question are being made in~~ accordance with the provisions of the applicable contracts, agreements and/or plans or, alternatively, that Defendants/Third-Party Plaintiffs have judgment against the Health Carriers for the amount of all refunded credit balances, plus prejudgment and postjudgment interest as provided by law, costs of suit, and such other and further relief to which they may be justly entitled.

POTTER, MINTON, ROBERTS,
DAVIS & JONES, P.C.
P. O. Box 359
Tyler, Texas 75710
Telephone: (903) 597-8311
Facsimile: (903) 593-0846

By:


MICHAEL E. JONES
State Bar No. 10929400
JAY N. GREEN
State Bar No. 08356300
E. GLENN THAMES, JR.
State Bar No. 00785097

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon Plaintiff's counsel of record by certified United States Mail, return receipt requested, on this the 3 day of July, 2000.

[illegible]

**NATHAN L. JACKSON, Individually
and on Behalf of a putative
class of similarly situated
individuals**

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3RD JUDICIAL DISTRICT

HENDERSON COUNTY, TEXAS

EAST TEXAS MEDICAL CENTER, ATHENS,	\$
EAST TEXAS MEDICAL CENTER REGIONAL	\$
HEALTHCARE SYSTEM, EAST TEXAS	\$
MEDICAL CENTER, EAST TEXAS MEDICAL	\$
CENTER PITTSBURGH, EAST TEXAS	\$
MEDICAL CENTER FAIRFIELD, EAST	\$
TEXAS MEDICAL CENTER RUSK, EAST	\$
TEXAS MEDICAL CENTER CROCKETT,	\$
EAST TEXAS MEDICAL CENTER	\$
JACKSONVILLE, EAST TEXAS MEDICAL	\$
CENTER CLARKSVILLE, EAST TEXAS	\$
MEDICAL CENTER TRINITY, EAST	\$
TEXAS MEDICAL CENTER CARTHAGE,	\$
EAST TEXAS MEDICAL CENTER	\$
QUITMAN, EAST TEXAS MEDICAL	\$
CENTER MOUNT VERNON, AND	\$
EAST TEXAS MEDICAL CENTER GRAND	\$
SALINE	\$

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Nathan L. Jackson, Individually and on behalf of a putative class of similarly-situated individuals, and files this his original Petition and in support thereof would respectfully show unto this Court the following:



I. DISCOVERY LEVEL

Plaintiff will conduct discovery under Level 2 of Rule 190.3.

II. PARTIES

Plaintiff is an individual residing in Henderson County, Texas

Defendant EAST TEXAS MEDICAL CENTER, ATHENS is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER REGIONAL HEALTHCARE SYSTEM is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER PITTSBURGH is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER FAIRFIELD is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER RUSK is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G.

Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER CROCKETT is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER JACKSONVILLE is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER CLARKSVILLE is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER TRINITY is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER CARTHAGE is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER QUITMAN is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER MOUNT VERNON is a Not for Profit Corporation and may be served with process by serving its registered agent,

Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

Defendant EAST TEXAS MEDICAL CENTER GRAND SALINE is a Not for Profit Corporation and may be served with process by serving its registered agent, Elmer G. Ellis, 1000 South Beckham Street, Tyler, Texas 75701.

III. FACTUAL BACKGROUND

Upon information and belief, Plaintiff asserts the following facts.

Plaintiff was a patient at Defendants' facility located in Athens, Henderson County, Texas. Plaintiff was billed for services provided at Defendants' facility in Athens, Texas. Defendants also billed Plaintiff's health insurance provider for said services. Payment was made by Plaintiff's health insurance provider and discount was given to Plaintiff on the bill. Despite payment and discount resulting from the health insurance provider, full charges were wrongfully required and paid by/on behalf of Plaintiff. Accordingly, Defendants have been overpaid for said services, with said overpayment resulting in a credit balance on Plaintiff's account.

Defendants wrongfully converted said funds for their own use and benefit to the detriment of Plaintiff or, alternatively, wrongfully forwarded Plaintiff's funds to his health insurance provider.

Plaintiff would show that Defendants routinely bill their patients and their insurers for the same services which results in overpayment and credit balances to patients' accounts, which Defendants convert for their own use and benefit to the detriment of Plaintiff and persons similarly situated to Plaintiff. Alternatively, Plaintiff

would show Defendants improperly charge patients who have successfully made recovery against third parties, wrongfully forwarding Plaintiffs funds to health insurance companies.

IV.

CLASS ALLEGATIONS

Plaintiff brings this action individually on behalf of and all others similarly situated. Plaintiff seeks to certify the following class:

All persons who have or have had a credit balance on their respective account for services rendered by Defendants, or who would have a credit balance but for fictitious charges or adjustments to said accounts since January 1, 1996.

All elements for class certification with Plaintiff as the class representative have been met.

V. SPECIFIC CLAIMS AND CAUSES OF ACTION

A. DECEPTIVE TRADE PRACTICES ACT

Plaintiff and the putative class are consumers as the term is defined in Section 17.45 of the Texas Deceptive Trade Practices and Consumer Protection Act.

The representations, acts, conduct, and omissions of Defendants constitute false, misleading, and deceptive acts or practices in violation of the Deceptive Trade Practices and Consumer Protection Act. Defendants' actions were done intentionally and knowingly.

B. FRAUD

Defendants have defrauded the Plaintiff and the putative class.

C. CONVERSION

Defendants have wrongfully converted funds for their own use and benefit to the detriment of Plaintiff.

D. CONSPIRACY

Upon information and belief, Plaintiff asserts at all times referred to herein and relating to Plaintiff, Defendants' employees/agents and others were acting individually and/or within their course and scope of employment and as agents for and with the approval of superiors, and each other. The actions, misrepresentations, statutory violations, breach of duties, and fraud of the Defendants were done with such frequency as to indicate intent and a general business practice. Upon information and belief, Plaintiff asserts Defendants are and were inextricably intertwined, jointly plotted, conspired, and colluded together so as to be one and are each therefore jointly and severally liable to Plaintiff for their actions. Upon information and belief, Plaintiff asserts Defendants are engaged in a civil conspiracy to defraud.

VI.

CONDITIONS PRECEDENT

All conditions precedent have occurred or have been waived.

VII.

ATTORNEY'S FEES

Plaintiff is entitled to reasonable and necessary attorney's fees.

VIII.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays for the following:

- a. economic damages for Plaintiff and all members of the plaintiff classes in an amount equal to any overpayment on Plaintiffs' accounts;
- b. economic damages for Plaintiff and all members of the plaintiff classes in an amount equal to the amount of fictitious adjustments to Plaintiffs' accounts;
- c. prejudgment and post-judgment interest as provided by law;
- d. court costs and attorneys' fees as authorized under the Texas Deceptive Trade Practices Act;
- e. a permanent injunction as authorized under the Texas Deceptive Trade Practices Act;
- f. restitution and/or restoration of property as authorized under the Texas Deceptive Trade Practices Act;
- g. additional, exemplary or punitive damages; and
- h. any other relief, at law or in equity, to which the Plaintiff and members of the plaintiff classes may show themselves justly entitled.

Respectfully submitted,

SHAW & LEMON

By: D. Brent Lemon

D. Brent Lemon

State Bar No. 12195900

2723 Fairmount

Dallas, Texas 75201

214-754-7110

214-754-7115 FAX NO.

ATTORNEYS FOR PLAINTIFF

Mr. Charles A. Clark
CLARK, LEA, RUTTER & LOGSON

604 Woldert

Tyler, Texas 75702

903-593-2514

903-595-1294 FAX NO.

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been sent to Mike Jones via facsimile on the 5th day of May, 2000.

D. Brent Lemon
D. Brent Lemon
I, D. Brent Lemon, Clerk of the District Court in and for Henderson County, Texas, do hereby certify that the above and foregoing is a true and correct copy of _____
_____ filed among the papers in _____
_____ in Cause No. _____
_____ in the office of the _____
District Clerk of Henderson County, Texas, at Athens, Texas, on the _____ day of _____, 19____
GIVEN UNDER MY HAND AND SEAL OF OFFICE at Athens, Texas, on _____ day of _____, 19____
By _____
Clerk of the _____
Henderson County, Texas

CIVIL DOCKET

SEAN GRAPHICS, INC.

371

CASE NO. 00-064

No. of Case			NAME OF PARTIES		ATTORNEYS		Kind of Action and Party Demanding Jury		DATE OF FILING		
00-064			NATHAN L. JACKSON, INDIVIDUALLY AND ON BEHALF OF A PUTATIVE CLASS OF SIMILARLY SITUATED INDIVIDUALS		D. HERBERT LARSON		U.S. DISTRICT COURT SOUTHERN DISTRICT OF TEXAS JUL 20 2000		5	8	00
Vol.	Fee Book	Page	vs.		Plt.		Defl.		Jury Fee, \$ Paid by Jury No.		
Date of Orders			ORDERS OF COURT								
Month	Day	Year	MINUTE BOOK								
6	19	00	See Case H 00-070 Filed Jackson, Tex.								
7	10	00	Order H 00-020 (8) Adm. Order in re								
00-064			All Handled - for the under Norris								
7 11 00			Set of Scheduling & 11/15/00								
7 11 00			Set 7.621.00 (Q) 10:00 AM								
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CIVIL DOCKET
3rd Judicial District Court

Henderson County
Case No. 00-064

The
Jul

NATHAN J. JACKSON vs. EAST TEXAS MEDICAL CENTER, ATHENS; ET AL

Filed : 05/08/2000
Status: Filed
Type: OTHER CIVIL CAU

Judge
Jim Parsons

Court Reporter
Felix Thompson

Date		V
	Events & Orders of the Court	
05/08/00	PLAINTIFF'S ORIGINAL PETITION	
06/05/00	CAUSE NOTES	
	DEFENDANT'S PLEA IN ABATEMENT AND ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION	
06/05/00	CAUSE NOTES	
	DEFENDANT'S MOTION TO COMPEL ARBITRATION AND ABATE PROCEEDINGS PENDING ARBITRATION	
06/05/00	CAUSE NOTES	
	ORAL DEPOSITION OF BYRON CURTIS HALE***\$236.00/LEMON	
06/09/00	CAUSE NOTES	
	PLAINTIFF'S MOTION TO COMPEL AND FOR SANCTIONS AND RESPONSE TO PLEA IN ABATEMENT	
06/19/00	MOTION TO COMPELL	
06/19/00	JUDGE'S NOTE	
	SEE CAUSE #00-020	
06/30/00	CAUSE NOTES	
	DEFENDANTS' RESPONSE AND REPLY TO PLAINTIFF'S MOTION TO COMPEL AND FOR SANCTIONS AND	
	RESPONSE TO PLEA IN ABATEMENT	
07/06/00	CAUSE NOTES	
	MOTION FOR SERVICE BY AUTHORIZED PERSON	
07/10/00	JUDGE'S NOTE	
	CAUSE #00-020 CONSOLIDATED INTO 00-064--ALL PENDING COURT TAKES UNDER ADVISEMENT	
	PRIVI--ISSUE ATTY/CLIENT--HEARING OF SCHEDULING AND M/SERVERANCE-SET 7-21-00 AT 10:00	
	AM-JIM PARSONS,JUDGE	
07/10/00	CITATION Issued - ATENA HEALTH & LIFE INSURANCE CO	
07/10/00	CITATION Issued - AETNA INSURANCE COMPANY OF AMERICA	
07/10/00	CITATION Issued - AMERICAN FAMILY LIFE ASSURANCE CO. OF COLUMBUS	
07/10/00	CITATION Issued - AMERICAN NATIONAL INSURANCE CO	
07/10/00	CITATION Issued - BANKERS LIFE AND CASUALTY CO	
07/10/00	CITATION Issued - BENEFIT LIFE INSURANCE CO	
07/10/00	CITATION Issued - CHRISTIAN FIDELITY LIFE INSURANCE CO	
07/10/00	CITATION Issued - CIGNA HEALTHCARE OF TEXAS, INC	
07/10/00	CITATION Issued - COMBINED UNDERWRITERS LIFE INSURANCE CO	
07/10/00	CITATION Issued - CONNECTICUT GENERAL LIFE INSURANCE CO	
07/10/00	CITATION Issued - EMPLOYERS HEALTH INSURANCE CO	
07/10/00	CITATION Issued - FIRST HEALTH LIFE & HEALTH INSURANCE CO	
07/10/00	CITATION Issued - FORTIS BENEFITS INSURANCE CO	
07/10/00	CITATION Issued - GENERAL AMERICAN LIFE INSURANCE CO	
07/10/00	CITATION Issued - GOLDEN RULE INSURANCE CO	

CIVIL DOCKET
3rd Judicial District Court

Henderson County
Case No. 00-064

The
Jul

NATHAN J. JACKSON vs. EAST TEXAS MEDICAL CENTER, ATHENS; ET AL

Filed : 05/08/2000
Status: Filed
Type: OTHER CIVIL CAU

Judge
Jim Parsons

Court Reporter
Felix Thompson

Date	V
Events & Orders of the Court (cont.)	
07/10/00	CITATION Issued - HARRIS METHODIST HEALTH INSURANCE CO
07/10/00	CITATION Issued - HARRIS METHODIST TEXAS HEALTH PLAN, INC
07/10/00	CITATION Issued - HEALTHPLAN OF TEXAS, INC.
07/10/00	CITATION Issued - HUMANA HEALTH PLAN OF TEXAS, INC.
07/10/00	CITATION Issued - JEFFERSON PILOT LIFEAMERICA INSURANCE CO
07/10/00	CITATION Issued - JOHN ALDEN LIFE INSURANCE CO
07/10/00	CITATION Issued - JOHN HANCOCK LIFE INSURANCE CO
07/10/00	CITATION Issued - KAISER FOUNDATION HEALTH PLAN OF TEXAS
07/10/00	CITATION Issued - LIBERTY MUTUAL INSURANCE COMPANY,
07/10/00	CITATION Issued - MARKEL INSURANCE COMPANY
07/10/00	CITATION Issued - SHALALA, DONNA E.
07/10/00	CITATION Issued - TEXAS DEPARTMENT OF HUMAN SERVICES,
07/10/00	CITATION Issued - METROPOLITAN LIFE INSURANCE CO,
07/10/00	CITATION Issued - MUTUAL OF OMAHA INSURANCE CO.,
07/10/00	CITATION Issued - UNITED STATES LETTER CARRIERS MUTUAL BENEFIT ASSOCIATION
07/10/00	CITATION Issued - NATIONAL FINANCIAL INSURANCE CO
07/10/00	CITATION Issued - NEW ERA LIFE INSURANCE CO
07/10/00	CITATION Issued - NEW ERA LIFE INSURANCE CO, MIDWEST
07/10/00	CITATION Issued - PCA HEALTH PLANS OF TEXAS, INC
07/10/00	CITATION Issued - PHYSICIANS MUTUAL INSURANCE CO
07/10/00	CITATION Issued - PIONEER LIFE INSURANCE CO
07/10/00	CITATION Issued - PRINCIPAL LIFE INSURANCE CO
07/11/00	CAUSE NOTES
	ORDER AUTHORIZING PERSON TO SERVE PROCESS PURSUANT TO RULE 103 T.R.C.P.
07/11/00	JUDGE'S NOTE
	S/O AUTHORIZING DEF. SERVICE--JIM PARSON
07/17/00	CAUSE NOTES
	PLAINTIFF'S MOTION FOR SEVERANCE OF THIRD PARTY CLAIMS
07/30/00	CITATION Issued - GUARDIAN LIFE INSURANCE CO OF AMERICA
Fee Payment Information	
	Total Payments: 3
	Total Charged : \$612.00
	Total Paid : \$612.00

CIVIL DOCKET
3rd Judicial District Court

Henderson County
Case No. 00-064

The
Jul

NATHAN J. JACKSON vs. EAST TEXAS MEDICAL CENTER, ATHENS; ET AL

Filed : 05/08/2000
Status: Filed
Type: OTHER CIVIL CAU

Judge
Jim Parsons

Court Reporter
Felix Thompson

Date

V

Fee Payment Information (cont.)

05/08/00	Check	Rcpt # 2623	\$155.00
07/03/00	Check	Rcpt # 3142	\$425.00
07/12/00	Check	Rcpt # 3233	\$32.00